

POST HEARING BRIEFING:

The Pacifica Foundation and the Crisis at

KPFA Listener Sponsored Radio

Report of the Joint Legislative Audit Committee

Public Hearing Conducted August 20, 1999 – Oakland, California

Assemblymember Scott Wildman, Chair

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With Special Thanks to Sherry Novick and Hans Hemann

Introduction

Early in 1999, volunteers and members of the programming staff of the Berkeley-based non-profit community radio station, KPFA, were forcibly removed from the station where they had been producing radio programming for Bay Area listeners. Subsequently, armed guards hired by the Pacifica Foundation prevented the programmers and volunteers from reentering the station where they had been working. Instead of the regular community programming, executives from KPFA's parent organization, the non-profit Pacifica Foundation (Pacifica), arranged for programming to air from an ISDN (Integrated Services Digital Network) line, which had been installed immediately after the lockout.

The lockout appears to have been a direct violation of Pacifica's agreement with its employee's union, Communications Workers of America Local 1941 (CWA). Additionally, the growing conflict that culminated in the lockout warranted a further legislative investigation of pertinent issues, both in regards to Pacifica's actions and to the role of the State of California in its regulation of non-profit charitable corporations.

Along with KPFA, the Pacifica Foundation owns, operates, and holds the broadcast licenses for FM radio stations KPFK in Los Angeles, KPFT in Houston, WBAI in New York, and WPFW in Washington D.C. Each of these stations raises funds locally through direct appeals to listeners. Each station is required to give 17 percent of locally generated fundraising proceeds to Pacifica for central services. Funds raised by local stations account for most of Pacifica's \$10-12 million annual budget.

Pacifica also receives annual funding from the Corporation for Public Broadcasting (CPB) along with various other grants for special projects.

In the case of KPFA, its local fundraising efforts have resulted in an operating budget that is based on approximately 85% locally-raised funds with CPB contributing roughly 13% of the local operating budget.

While not as pronounced as the lockout and conflict at KPFA, the other four stations have also faced problems with executives of the Pacifica Foundation. In fact, members of four of the five Pacifica station Local Advisory Boards (LABs) have filed suit against Pacifica alleging illegal changes in its bylaws, misconduct of the Pacifica Board, and unfair business practices.

In part because of the stations' long-standing commitment to noncommercial programming and civic awareness, several members of the California Legislature became concerned about the Pacifica conflict, the behavior of Pacifica executives, and the future of these important institutions. On July 15, 1999, 24 legislators submitted a joint request to the Joint Legislative Audit Committee (JLAC) to hold public hearings to discuss the sources and solutions of the conflict. Particularly, the legislators wanted to examine whether Pacifica may have violated its charter and tax-exempt status by taking the following actions:

- 1) Voting to disenfranchise its Local Advisory Boards
- 2) Using funds for purposes inconsistent with its charter.

- 3) Violating the operative collective bargaining agreement with the Communications Workers of America, Local 9415, which contains a clear no lock-out/no strike provision.¹

The JLAC convened a hearing on August 20, 1999, at the Elihu Harris State Building in Oakland, California. JLAC requested the appearance of Pacifica executives along with board members, local advisory board members, staff members and volunteers. Testimony was provided by the following individuals:

- Matthew Lasar, author, Pacifica Radio: The Rise of an Alternative Network
- J. Imani, Member, KPFA Local Advisory Board
- Susan Stone, KPFA employee
- Bill Harvey, Communications Workers Association, AFL-CIO
- Peter Bramson, Member, Pacifica National Board
- David Adelson, KPFA Local Advisory Board Acting-Chair
- Meigan Devlin, KPFA employee
- Nicole Sawaya, Former KPFA Station Manager
- Sherry Gendelman, Member, Local Advisory Board
- Edward Klein, Senior Tax Counsel, Franchise Tax Board
- Belinda John, Deputy Attorney, Office of the Attorney General

The JLAC had requested the appearance of three Pacifica representatives: Pacifica Chair Mary Frances Berry (Berry), Executive Director Lynn Chadwick (Chadwick) and Controller Sandra Rosas. Unfortunately, although Pacifica, through its attorney Dan Rappaport, had agreed with the JLAC to be represented at the hearing by at least Chadwick, none of the

¹ July 15, 1999 letter from 24 California legislators to JLAC Chair Scott Wildman

Pacifica representatives appeared. Both Berry and Chadwick failed to return calls to the JLAC. In lieu of appearance, Chadwick opted to submit written testimony, which was read publicly by JLAC Chair Scott Wildman (Wildman).

“To the honorable chairman and members of the committee, thank you for the opportunity to present this written testimony. Pacifica radio and community radio across the United States were founded on the principal of independence of non-commercial broadcasting, free from unnecessary intrusion by governmental and political bodies. This tradition has been shared by Pacifica and KPFA for fifty years. It has been a principal I have worked to preserve during my twenty-seven year involvement in community radio. Of course Pacifica is responsible to the Federal Communications Commission and other governmental bodies in the course of the work we do and we follow all local, state and federal laws and regulations. Because I value the principal of independence of undue political interference in public broadcasting, I will not appear as a witness during today’s hearing. Also our attorneys advised us that the Joint Legislative Audit Committee was created to oversee governmental and public bodies. Since the Pacifica Foundation is a non-profit corporation, we believe this committee does not have the jurisdiction over our operations. However, in the spirit of cooperation and conciliation, ...I offer this written testimony to the committee to provide information about the recent events at KPFA. All the extraordinary actions and expenses that Pacifica has undertaken have been ... a reasonable response to the extraordinary actions taken against the station. It was unfortunate the committee chose to not consult with me or any of the Pacifica national staff in preparation of the KPFA Radio chronology of events, there are significant omissions that need to be corrected as well as several misrepresentations of the facts.”²

² Written statement by Lynn Chadwick, read by JLAC Chair Scott Wildman

The JLAC's Role

Due in part to Chadwick's assertions about JLAC's authority, Wildman explained the JLAC's role to the more than 200 audience members.

"The Joint Legislative Audit Committee (JLAC) is an investigative body of the State of California. It is governed by Government Code 10500 et seq. and the Joint Rules and has very broad authority to investigate matters of concern to the State. Wildman elaborated during his opening remarks.

[The JLAC] is a committee that has the broadest authority of any committee in the State Legislature in California ... We at the Joint Legislative Audit Committee have two functions. One is to perform investigations. And those investigations deal with issues of efficiency and also issues of performance related to public entities in the State of California - actually living up to what the intent of the legislation that created them was. So, essentially, the issue here is going to be, for us to discuss and find out, in general terms, exactly what the relationship is between KPFA, Pacifica, and other stations in the Pacifica network [are] and also the relation to the legislature. We have the added authority to be able to direct the office of the California State Auditor, the Bureau of State Audits in California. That department is independent of the executive branch and conducts performance audits, performs financial audits, and has the authority to essentially stand in the shoes of any public agency or any state or local agency. So... any regulatory agency that has any involvement with either Pacifica Foundation or KPFA, is an agency that we can direct to provide us with the information that we need to conduct our investigation. The authority is very clear in our minds [and] in the mind of the legislature - and the fact is that this situation, with respect to the issues of freedom of the press - constitutional issues that are involved,[issues]

*which are sacrosanct in this society – [consequently] we will do all we can to get to the bottom of this and to try to help resolve the situation.”*³

The Attorney General and the Franchise Tax Board

Because the Pacifica Foundation is a non-profit, public benefit corporation registered with the office of the Attorney General and the California Franchise Tax Board, it enjoys certain benefits – primarily its tax-exempt status. Belinda John, Deputy Attorney General from the Charitable Trust Section, explained.

In order to maintain its status, a non-profit must adhere to certain legal principals, primarily that

*“the assets of the charities are used for their intended purpose. The role of the Attorney General’s office is to represent the public beneficiary of a charity who can not sue in their own right.”*⁴

The Board of Directors is responsible for implementing the purposes stated in the Articles of Incorporation in a manner they believe to be in the best interest of the corporation. However, if the purposes are broadly written, a board would naturally have more discretion to act, as long as it’s not clearly inconsistent with its stated purposes.⁵

Further, a charitable trust, such as Pacifica, must also apply for tax exemption with the California Franchise Tax Board (FTB) and the Federal Internal Revenue Service.

³ Oral statement from JLAC Chair Scott Wildman

⁴ Oral testimony from Deputy Attorney General Belinda John

⁵ Letter from Attorney General Bill Lockyer to Assemblywoman Audie Bock, read orally on August 20, 1999

The FTB examines the applicant's organizational structure, proposed operations and evaluates whether its purpose, as described, is consistent with State regulatory requirements. It further ensures that the applicant has agreed that its assets will remain in a charitable component forever [emphasis added].

Pacifica Foundation's Mission

In 1946, pacifist Lewis Hill (Hill) created the Pacifica Foundation in an effort to

"promote community dialogue, generate a sense that people could resolve their ideas, or at least come to what was called lasting understanding of different people... [and] their ideas," according to historian and author Matthew Lasar (Lasar).

Hill had apparently believed that resolution of controversial issues on a local level could lead to increased dialogue and greater understanding, Lasar told JLAC. At that time, Pacifica's activities weren't restricted to radio. Lasar explained.

*"What the original Pacifica Foundation's Articles of Incorporation came out, it wasn't just for radio stations. Go to the schools, and newspapers, bookstores...at one point they had some discussions about opening up a chain of restaurants."*⁶

Pacifica's mission statement, as written in its Articles of Incorporation, in fact, states its goals as the following:

- *To establish a Foundation organized and operated exclusively for educational purposes, no part of the net earning of which inures to the benefit of any member of the Foundation.*
- *To establish and operate for educational purposes, in such manner that the facilities involved shall be as nearly self-sustaining as possible, one or more radio broadcasting stations licensed by the Federal Communications Commission and subject in their operation to the regulatory actions of the Commission under the Communications Act of 1934, as amended.*
- *In radio broadcasting operations, to encourage and provide outlets for the creative skills and energies of the community; to conduct classes and workshops in the writing and producing of drama; to establish awards and scholarships for creative writing; to offer performance facilities of amateur instrumentalists, choral groups, orchestral groups and music students; and to promote and aid other creative activities which will serve the cultural welfare of the community.*
- *In radio broadcasting operations, to engage in any activity that shall contribute to a lasting understanding between the individuals of all nations, races, creeds and colors; to gather and disseminate information on the causes of conflict between any and all of such groups; and through any and all means compatible with the purposes of this Corporation, to promote the study of political and economic problems and of the causes of religious, philosophical and racial antagonisms.*
- *In radio broadcasting operations, to promote the full distribution of public information; to obtain access to sources of news not commonly brought together in the same medium; and to employ such varied sources in the public presentation of accurate, objective, comprehensive news on all matters vitally affecting the community.⁷*

⁶ Oral testimony of Matthew Lasar

⁷ Article II of Pacifica Foundation Articles of Incorporation,

In 1948, while “*tangled up in license and tax obligations*,” the founders wrote an internal document “*to remind themselves*” of their purposes – in large part mass media pacifist “war resistance” programming.

KPFA began its operation in 1949, as, according to Lasar, the first radio outlet worldwide to seek support solely from listeners and to “*function independently of the academy, the state, the corporation or the church.*”

Hill wanted to avoid the commercial structure of radio, as he believed that when programmers were charged with “*delivering*” an audience, it “*prevented ethical communications*,” according to KPFA Local Advisory Board Acting Chair David Adelson (Adelson). Hill, instead, created the following paradigm.

“...*a structure where programmers should be in front of microphones with [ethical] purposes... the people who would have a stake in having that occur would be listeners and they would pay for it and that therefore they had to be active participants in the process in order to allow that space to exist.*”⁸

The funding theory was put to test, and Pacifica grew to own and operate five radio stations, at least one of which was gifted to the Foundation -- New York station WBAI. WBAI was valued in 1996, as being worth approximately \$90 million, Adelson told JLAC.

In recent times, however, it appears that the Pacifica Foundation has modified its mission, which is represented on its website at <http://www.pacifica.org> as follows:

⁸ Oral testimony of David Adelson

“Pacifica Foundation created the world's first listener-sponsored radio as Lew [Hill] and a group of conscientious objectors sought a medium in which to speak out against the military force of World War II. The organization's mission is to:

- *Promote cultural diversity and pluralistic community expression;*
- *Contribute to a lasting understanding between individuals of all nations, races, creeds and colors;*
- *Promote freedom of the press and serve as a forum for various viewpoints; and,*
- *Maintain an independent funding base.⁹*

Governance: The Changing Role of the Local Boards

“As the licensed holder, the Pacifica Foundation Board has three primary areas of responsibility. To make sure that all stations are meeting FCC regulations, to be ‘fiduciarly’ responsible and to ensure the stations are fulfilling their public service mission as stated in the Articles of Incorporation. Anything more than that is gravy, or dangerous, depending on the intent of the leadership.”¹⁰

Another of Pacifica’s innovations was the local station board, which is now called the Local Advisory Board (LAB), according to Lasar.

In fact, the National Board was not created until the 1960’s after both New York’s WBAI and Los Angeles’ KPFK were created, he told the JLAC.

Originated as a support structure for the local networks, the National Board was intended to:

⁹ Pacifica’s current mission statement as posted on its website

¹⁰ Oral testimony of Nicole Sawaya

“provide assistance in the areas administration, technological development, fundraising and also produce compelling national programming that could be used by local stations as well as affiliates that are independent stations throughout the country who subscribe to Pacifica for programming,” according to KPFA local advisory board (LAB) chair Sherry Gendelman (Gendelman). *“The birth of the national office was predicated upon the idea that it would strengthen and aid the development of local networks. There was no stated intention to diminish or remove community input from the local station,”*¹¹ she said.

Historically, each of the station boards, now termed LABs, elected two of its members to the governing board of Pacifica, allowing the community needs and opinions to guide the governance of the foundation, according to Gendelman.

The local boards and stations, in fact, had a great deal of responsibility, Gendelman told JLAC.

*“[The] Local stations hired and fired their staff [and] local advisory boards [had] input into certain hiring. Members of the local advisory board staffing committee reviewed who they were considering for the selection of station general managers. While the local advisory boards were not elected by the membership or subscribers, the listening audience, actual and potential, was considered...”*¹²

The ultimate intent in creating such a locally-dominated governing board, Gendelman said, was *“to retain community input and control over the Pacifica network,”* which she maintains, until recently, remained *“solid.”*

¹¹ oral testimony of Sherry Gendelman

¹² *ibid*

For many years, Pacifica struggled with the “*effective balance*” between the national and local boards but never, until recent times, suggested any alteration to the original structure, Lasar told the JLAC.

However, in October 1994, Pacifica’s direction appears to have shifted from that of a community dialogue to a more centralized agenda with centralized control, according to KPFK LAB Adelson. Adelson discussed Pacifica’s five-year plan that first emerged during that time and what he perceived to be the plan’s intent.

“The five year plan... if it’s read carefully, I think describes a process of what I think of as a seduction of the governing board by visions of leveraging Pacifica’s assets to create an extensive alternative media network that is put at the disposal of the people who are making the decisions about what it shall be used for. The recognition that...the board and the administration, I believe, recognize that the reconfiguration required to bring about growth of the type that they had in mind is expressed, for example, in the envious descriptions of the growth Christian Broadcasting... They recognize that [it] would require substantially greater funding and sources and money. And the existing audiences and subscribers who were attracted to the network on the [current] dynamic would very likely be alienated.”¹³

Shortly thereafter, Pacifica former executive director Patricia Scott (Scott) asserted authority over the local station boards (now LABs). Adelson read from Scott’s internal memorandum.

¹³ Oral testimony of David Adelson

“We feel it necessary to remind you, the local station board is responsible for the national board and, in fact, serves at the will and direction of their national board. The local station board of directors’ main responsibility is to carry out the directives of the national board and abide by its decision.”

However, Adelson maintains that Scott’s assertions in that memo were altogether false.

He explains.

“The FCC Communication Act states that the local station board, the advisory board’s role, is to review the significant policy decisions, the programming goals and the service provided by the station. And subsequent CPB audits of Pacifica indicated that there had been interference in serving that mission. I should also note that at this time and up until recently, two-thirds of the governing board were elected by advisory board. So this is like threatening the shareholders. If you don’t do what we like, we can get rid of you. And indeed, that happened at various stations.”

The end result, Adelson told the JLAC, was that Pacifica took authority over local programming issues, dissolved the station boards and created a less authoritative body, the LAB. A memorandum was circulated to voting board members in order to explain the changes. Adelson read from the memorandum.

“At an October 1994 national board meeting, the board mandated that station managers reconfigure programming to better serve more listeners in each single area, to develop more relevant and professional programming and, thereby, increase the audience. We were mindful that this would, unfortunately, inconvenience, if not distress, some staff or audience members. . . . The local

*advisory board is hereby directed not to take action that would deplete the ranks of the station staff. Members of any local board who do not feel that they can assist Pacifica in its present mission are advised to resign. If there are indications that actions are being taken collectively or individually to countermand the policies, directives and mandates of the Pacifica board, the board will take appropriate steps.*¹⁴

In January 1995, Pacifica “took over the Los Angeles station KPFK, seized control of its votes, suspended contract negotiations and initiated other management controls,” Gendelman told JLAC. The new effort was intended to “eliminate as much of the community input as possible,” she said.

By January 1997, at a “retreat,”¹⁵ Pacifica “announced plans to reduce the amount of representatives elected by the local advisory boards . . . [which would] give the national governing board the ability to appoint a two-thirds majority,” according to Gendelman.

No longer could LABs elect two-thirds of the governing board, as they had been doing. Instead, Pacifica proposed that the LABS would only “nominate” two people from each board from which the governing board would choose one, followed by an appointment of its own choosing and from its own pool of candidates.

“... thereby giving itself complete control of two-thirds of its own membership because it also controlled over five at-large members and left [elective] control over the remaining one-third. This is the transfer of ownership. Subsequent

¹⁴ *ibid*

¹⁵ Oral testimony by David Adelson

statements by the board indicate they believed they voted on changes in governments at that retreat.”¹⁶

The Change in Bylaws

Article 9 of Pacifica’s bylaws addresses the procedure in which the bylaws can be amended. It reads,

“These bylaws may be amended, altered or repealed in whole or in part at any meeting of the Board of Directors, provided that the proposed changes have been submitted to each member of the Board of Directors with the notice of the meeting and provided further that the right of waiver of notice of meeting shall not apply.”

However, it became clear at the 1997 “retreat, where votes cannot be taken,” that Pacifica hoped to change the structure, according to Adelson, who added that on two occasions, because of “*public outrage... the plan was deferred.*” Later, the “retreat” action was treated as if it were an official vote, he explained.

“Subsequently, however, Roberta Brooks, who was Secretary of the Board [National Board] at that time, sent a memorandum to [one] local advisory board trying to explain to them issues of these governance changes... She says... ‘The first item of business in the committee meeting was to receive consensus that the

¹⁶ *ibid*

proposed guidelines of governance had indeed been passed in Houston and our job was one of implementation.’ She’s saying that a vote occurred at a retreat, where votes cannot occur. And it had been agreed to and they were just creating language that hadn’t existed about what it was they had done. She also says that, ‘Pacifica’s attorney suggested that we separate nomination and election processes into two separate elements under Article 3, since that had not been previously noted as we were required to table it.’ But that feature is talking about the removal of the rights of the advisory boards to [elect] governing board members, and instead reclassifying what advisory boards did as nominating.”¹⁷

The Catalyst: The Corporation for Public Broadcasting

On September 14, 1998, in a letter to Scott, Corporation for Public Broadcasting (CPB) President, Robert Coonrod (Coonrod), opined that concurrent service of LAB members on the Pacifica National Board might violate either the letter or spirit of the Federal Communications Act of 1934, as amended.

Subsequently, on February 24, 1999, new Pacifica Executive Director Chadwick received a letter from CPB Vice-President, Richard Madden (Madden) emphasizing this opinion, Adelson told the JLAC. He read from the letter.

“You have asked about how flexible CPB might be. That was the purpose of our Sept. 14 letter. CPB made a first payment on Pacifica’s FY 1999 grants on the

¹⁷ Oral testimony of David Adelson

assumption that Pacifica would resolve this issue promptly. It is now five months later and I am not aware that Pacifica has adopted a plan to achieve compliance. What CPB wrote then, I repeat now: ‘compliance with this portion of the law gives little wiggle room to CPB in its interpretation. If we are to comply with the law and apply it equitably – that is, as we have other grantees – then CPB has no choice but to withhold Pacifica’s second FY 1999 payments for each of its five stations, due for release in mid-March, unless the Pacifica board chooses to bring itself into compliance with the requirements of the law.’¹⁸

However, the notion that Coonrod’s opinion suggesting that LABs could not have a role in governance is open to question, and in fact, Coonrod clearly omitted one section of the law, Adelson informed the JLAC.

“There is a single clause in between those two quotes, which he omits. It says that the ‘community advisory board shall be solely advisory in nature, except [to the extent] that other responsibilities are delegated to it by the governing board of the station,’ [emphasis added], which means the advisory board could perfectly well have roles involving governance as long as they did not grant the advisory the right to have any authority to exercise control of the daily management of operations.”

In 1998, CPB continued to interpret the law in its document, *Communication Act and Certification requirements for CPB Station Grant Recipients*, as follows:

¹⁸ *ibid*

"The law segregates the management and operation functions of the governing board from the advisory board's functions to assure a clear demarcation between the governing board and the advisory board."

Meanwhile, it appears that CPB's threat to withhold funding and the proposed bylaw changes were sent after Pacifica sent its board members notice of opinion. According to Adelson, Pacifica Board members at this point could only vote the bylaws proposal up or down. Adelson questioned the timing of the letter.

*"There wasn't, to my knowledge, further action, at least there's no memo to further action, until immediately before the governing board meeting at which the board was going to vote on a proposal of altered governance structure to be in compliance with CPB."*¹⁹

At the time of the vote, Chadwick allegedly told the Board that the stations faced the loss of all CPB funding if it failed to comply with the Communications Act, according to witnesses. She subsequently asked station managers to report to the Board the possible effect of such a financial loss. Those reports led members of the Board to vote for the bylaw change, they admitted.

"... the elimination of staff was what was used to force wavering governing board members to vote for it, who weren't going to vote for it.... I know of at least some that were going to vote to continue the matter, to consider alternative proposals at subsequent meetings. But threatening to lose CPB funding, to hear

¹⁹ Oral testimony of David Adelson

*what managers were telling you, if we lose this funding we're going to lay off three quarters of our staff, which would be a blood bath.*²⁰

Without considering any other alternatives, on February 28, 1999, the Pacifica National Board voted to alter Pacifica's structure and bylaws.²¹

In combination with the bylaw change, that Pacifica asserts occurred at their September 28, 1997, National Board meeting, it appears that the vote gave the National Board exclusive control of its own membership, as it essentially removed the voting rights of LAB members of the Board of Directors and prohibited concurrent membership on both the LAB and the National Board. Members of the National Board expressed their regrets to the JLAC.

*"I voted in support of that bylaw change, which was a mistake. I was faced with a very difficult decision, as a member of the board, to maintain compliance as it has been told to me..."*²²

Local station supporters were especially troubled by this Board action and viewed it as an intentional act to reduce or even eliminate the participation of local stations.

(Note: Until the February 1999 vote, Pacifica had always received a CPB "waiver" ruling, apparently, in part, because its structure predated CPB, according to Bramson.)

Further, it appears from at least one document read before the JLAC that Pacifica may have withheld and even misrepresented the proposed changes to its members, staff, volunteers and subscribers. Adelson read and explained the item.

²⁰ Oral testimony of Pacifica Foundation national board member Peter Bramson

²¹ Oral testimony of David Adelson

“...[the] first ever Communications Director of Pacifica, ...Burt Glass... writes ‘ please do not make and distribute copies to others’ ...people are being trained to respond to public inquiries about why this governing change was necessary, including a before and after ‘we tell you what it is’ plan of what to say. Before we tell you what it is, say you don’t know yet.”²³

²² Oral Testimony of Pacifica Board member Peter Bramson

²³ Oral testimony of David Adelson

The “Gag Rule”

“... to promote the full distribution of public information ...and to employ such varied sources in the public presentation of accurate, objective, comprehensive news on all matters vitally affecting the community.”²⁴ [emphasis added]

It appears that the groundwork was first laid for the “gag rule” in or about June 1995 when Pacifica closed “*future finance committee meetings of the governing board from the public, stating that the minutes were confidential,*” which Gendelman maintains was “[an] action eventually held to be in violation of the Federal Communication law.”²⁵

Additionally, Pacifica appears to have closed its books to anyone other than confidential employees, specifying that union members would no longer have access to the books, according to Adelson. Shortly thereafter, Pacifica Executive Director sent a memorandum to the LABs threatening removal from the Board for LAB members who did not accept the reconfiguration, Adelson told the JLAC.

Soon the “gag rule... rose to new heights,” Adelson said, when KPFFK management posted a statement not only prohibiting any on-air discussion about Pacifica’s internal policies but also disallowing

“a listener calling in to speak or to announce events at which such policy would be discussed. So absolutely no knowledge to the listeners could get out. And ‘this is one of the few rules we have... that will absolutely lead to permanently being

²⁴ Pacifica Mission Statement from Articles of Incorporation

removed from the station.’ And if the people were permanently removed from the station, they wouldn’t notify the listeners. At approximately the same time, all five station folios, which were monthly communications to subscribers, were eliminated, thereby truncating communication between the people who were paying for it and the people who were doing something with the money that they recognized would be in variance with the interests of the people paying for it.”²⁶

In 1996 at KPFK, one programmer appears to have been removed while on air as a result of discussing these internal affairs. Adelson described the occurrence.

“... a black programmer got on and started talking with other black programmers that he had in the studio with him about the treatment of black programmers at Pacifica. . . And fifteen minutes into the program, he said ‘Oh, there’s our General Manager; I see he’s come down. Perhaps he’s going to join us, no I guess not.’ Dead air. No explanation was ever given to listeners.”²⁷

The “gag rule” enforcement continued and intensified after the March 31, 1999, dismissal of popular KPFA General Manager, Nicole Sawaya (Sawaya) and the appointment of Chadwick as interim General Manager. After discussing the termination of Sawaya during their programs, two programmers, Larry Bensky and Robbie Osman, were removed from the air for discussing internal matters. Such tactics appear to have ultimately led to the eruption of the current conflict at KPFA, according to KPFA employee Meigan Devlin (Devlin).

²⁵ Oral testimony of Sherry Gendelman

²⁶ Oral testimony of David Adelson

“The following months were filled with retaliatory actions for speaking out on the air. Security guards were imposed upon our lives seemingly for no reasons and apparently with no instructions. The day after, ten community members walked passed the guards to peacefully confront Lynn Chadwick. I was forced by her to cancel 250 access codes, leaving staff and programmers with limited access and ... leaving the facility in the hands of... guards. The day after, the crowd that had the demonstration in front of KPFA was invited into our lobby and was asked to leave, which they did peacefully. The security guards were upgraded to five... with whom everyone was to check in and out. The message we were receiving as staff members was one of intimidation and devaluation. We were told Pacifica needed to demonstrate to its governing board that it was protecting its assets. Throughout this crisis, requests for communication from Pacifica had been met with silence, avoidance, inadequate answers and even lies. The type of communication that was straight forward, much of what it was from the past, had been avoided... I have witnessed my coworkers fleeing from KPFA to seek employment elsewhere. I have witnessed my coworkers being fired without an explanation why... I have observed my coworkers wondering if the paycheck I am handing them, will be their last. And I have witnessed my coworkers being arrested at the hand of their employer.”²⁸

Exacerbating the Conflict, Rumors of Station Sale

“There will be no other choice at some point, except to sell a frequency in order to ‘... censor news, bring in armed guards, then use a bunch of lawyers to consult as to the damage control around our actions, while thumbing our nose at staff,

²⁷ Oral testimony of David Adelson

²⁸ Oral testimony of Meigan Devlin

the entire Bay area community, plus concerned citizens from around the country. Sorry, now please leave us alone.’’²⁹

On July 12, 1999, treasurer-elect of the Pacifica National Board, Micheal Palmer (Palmer), wrote to Berry about rumored support for a possible sale of KPFA or WBAI and the “*shutting down [of] that unit and re-programming immediately.*” The rumor began by an e-mail message from Palmer that was inadvertently received by and made public by the San Francisco Media Alliance.

On July 13, 1999, after KPFA public affairs programmer Dennis Bernstein (Bernstein) broadcast a press conference at which the Palmer Email was read, Bernstein was ordered to leave KPFA. Instead he made his way to the studio where the news was being broadcast. A conflict ensued as Pacifica management tried to have him removed. Portions of this conflict interrupted the evening news and were broadcast. Hundreds of people converged on the station, and 53 protesters, along with several KPFA staff members, were arrested.

All KPFA broadcasters were immediately placed on administrative leave and locked out of the station, a violation of Pacifica’s collective bargaining agreement with the Communications Workers of America (CWA) Local 9415, which specifies a “*no lockout, no strike*” provision.

Protests continued, including a 15,000 person march and rally on July 31, 1999, in support of KPFA staff and volunteers.

²⁹ Oral testimony of Nicole Sawaya

Subsequently, Chadwick directed staff to return to work on Monday, August 2, 1999, but due to damage to the building, the fire marshal only permitted staff back in the building in time to return to the air on August 5, 1999.

Increasing Isolation and Centralized Control

Recognizing their responsibility to the communities they serve, their listeners, and their donors, it is a common practice among public radio stations to regularly disclose their financial status and hold open discussions of pending financial decisions. Testimony before the JLAC indicated that Pacifica has instead grown more secretive about its finances. Sawaya said that in the current structure,

“...the Board is now self-appointing, governing and overseeing all financial aspects, with no accountability to either stations or the financial stakeholders, the subscribers or donors...”³⁰

Board members were not sufficiently informed or involved in the financial decisions made by Berry and Chadwick, according to one board member Peter Bramson (Bramson).

Assemblymember Dion Aroner (Aroner) asked Bramson about the availability of the budget to board members, to which Bramson replied,

“...we receive them preliminarily through June as a full statement. And then we go on to the October meeting.”

Aroner inquired further, *“But you have no idea if you’re living within your revenue projections or anything like that.”*

³⁰ Oral testimony of Nicole Sawaya

Bramson replied, “*Correct. . . In some instances I’m impeded in my level of knowledge or specificity to where and what and when it happens.*”

Another member of the board, Rabbi Aaron Kriegel (Kriegel) indicated that he had made frequent formal requests for “*a full accounting of the specific aspects of the Pacifica accounting practices.*” Such requests pertaining to Pacifica’s accounting practices were apparently ignored.

Witnesses charged that the lack of financial information was pervasive throughout the organization, resulting in “[*waiting*] months to find out if you were running a deficit or not,” Sawaya told the JLAC.

Extraordinary Expenditures

During the conflict, Chadwick apparently committed Foundation funds to pay for expenses, which some believe are “*antithetical to the Pacifica Mission*” and therefore a “*misappropriation of funds.*”³¹ Some of those moneys were spent for management and public relations consultants and armed guards inside the KPFA building, which also housed the Pacifica national office, thus increasing the traditional level of local support to Pacifica as opposed to local station operations. Susan Stone, KPFA employee, explained.

³¹ Oral testimony of Susan Stone

“The Executive Director and national Board chair have misappropriated the listener funding for expenses antithetical to the Pacifica mission, such as placing 24-hour armed guards carrying concealed weapons inside a building whose activities are dedicated to promoting peace.”³²

Making matters worse, the normal bookkeeping and financial practices and procedures were apparently ignored for these expenses. Devlin explained,

“ . . . normally, when there are disbursements made from the lock box, I am informed by getting a copy of the check requisition and a copy of the invoice. And normally, in instances like that, it’s for things that the Pacifica Foundation has a public group buy, meaning they would buy services for all the five stations and it’s much easier to pay from one office than to pay from five offices. And I usually know about it, if not ahead of time, I know about it soon afterwards.”³³

Devlin ran a financial report and found new vendors, she told the JLAC.

“I’m normally the only person to add vendors. Like I said, I usually know ahead of time if they’re going to pay something else out of our accounts. A few vendors had been added and some money had been spent [that] did have to do with the crisis and services that they required during the crisis. And the total impact to our budget, to our operating budget, is close to \$30,000. Until the Committee subpoenaed the financial records for Pacifica, it was unclear what extraordinary expenses were accrued.”³⁴

³² Oral testimony of Susan Stone

³³ Oral testimony of Meigan Devlin

³⁴ *ibid*

Because KPFA employees could not make contact with either Chadwick or Berry, they effectively were forced to pay for repairs and on-going operations with their own personal money, witnesses said.

“We have spent our own money to pay for production materials and resources that are not forthcoming in check requests, as we are hamstrung by Pacifica changing rules on what constitutes legitimate station expense.”³⁵

Pacifica’s Source of Funding

“... in such manner that the facilities involved shall be as nearly self-sustaining as possible.”³⁶

Witnesses argued that revising Pacifica’s bylaws and structure in order to receive funding from CPB contradicted the intent to maintain an independent funding base.

Further, one of Pacifica’s key roles is to “*ensure the stations are fulfilling their public service mission as stated in the Articles of Incorporation,*” according to Sawaya.

However, Sawaya asserts that the main foundation “*is a misnomer,*” predominantly because of the following:

“The foundation does not support the stations. The stations, hence the listener sponsors, support the Foundation. The stations also support all the Foundation’s

³⁵ Oral testimony of Susan Stone

national endeavors, including but not limited to, network programming, distribution of the programming, the Pacifica archives and all the national staff. The current Pacifica national endeavors produce very little revenue. In their present configuration and levels of achievement, the national endeavors of the staff are a growing financial burden on the stations.”³⁷

KPFA, one of five Pacifica stations, raises nearly 85 percent of its operating funds from direct listener contributions, according to witnesses.

Those funding donations are clearly due to listener satisfaction in programming and a level of trust in the organization. In the funding arrangement, a “contract” is made between the station and the listener, Sawaya said. She explained,

“If the radio programming resonates with the listener’s beliefs, fills the need or provides a ‘must have’ service, they give. In the case of KPFA, the reason people give money is primarily for the local service since most of the station’s 24-hour broadcast day is produced by local staff. When the staff fundraises on-air and off- air, they make a deal with listeners and supporters. We’ll do relevant radio, making it locally and producing locally and we’ll be honest, open and trustworthy in managing the station, if you’ll give us money. And they do. With regards to KPFA, over 15 percent of the listeners give and they give very generously, as they did during the capital campaign which built 1929 Martin Luther King Jr. Way [the building that houses KPFA].”³⁸

³⁶ Pacifica Mission Statement from Articles of Incorporation

³⁷ Oral testimony of Nicole Sawaya

³⁸ Oral testimony of Nicole Sawaya

However, many witnesses expressed concern that Pacifica's actions before and during the conflict undermined the implied contract KPFA has with its listener-contributors.

*"Public broadcasting is built upon the trust it has with its viewers and listeners and anything done which erodes that trust is just not smart. Well, it appears the recent actions of the Pacifica Foundation and management have not just eroded the public trust, they have obliterated it."*³⁹

The actual treatment of the conflict, of staff and listeners, particularly, appeared to have contradicted Pacifica's intent and thus, further violated listener trust. Lasar explained,

*"...Their message isn't just what you say, it's what you do...how can we aspire to such a goal when Pacifica's governors so completely repudiate any obligation to the network's constituents?"*⁴⁰

Additionally, because a significant portion of Pacifica funds have come from KPFA, stakeholders were particularly disturbed that the executives had not engaged in dialogue with the stakeholders, J. Imani (Imani), a member of the KPFA LAB, made the following statement.

*"...The money that was used to build that station came out of this community. A huge portion of Pacifica's funding comes right here from the Bay Area every year and [Chair Berry doesn't] even have the common decency and respect to come and meet with us during the largest crisis in the history of community radio. It is absurd."*⁴¹

³⁹ *ibid*

⁴⁰ Oral testimony of Matthew Lasar

⁴¹ Oral testimony of J. Imani

Meanwhile, Gendelman told the JLAC that over the last 10 years, Pacifica and its stations have grown “*more dependent upon KPFA*” for funding.

*“Ironically, as that dependence grew, the Corporation for Public Broadcasting has been used an excuse to grow Pacifica’s strength and, conversely, limit the control of local stations,” she said. Meanwhile, “the stated intention of growing Pacifica never delivered either heightened technological assistance, nor fundraising acumen, nor management skills. And its national programming staff... programs... was dramatically reduced when it fired Larry Bensky.”*⁴²

Pacifica’s Silence

*“ . . . to engage in any activity that shall contribute to a lasting understanding between the individuals of all nations, races, creeds and colors; to gather and disseminate information on the causes of conflict between any and all of such groups; and through any and all means compatible with the purposes of this Corporation, to promote the study of political and economic problems and of the causes of religious, philosophical and racial antagonisms...”*⁴³

⁴² Oral testimony of Sherry Gendelman

⁴³ Pacifica Mission Statement from its Articles of Incorporation

Witnesses attested to making repeated efforts to initiate dialogue and communicate the potential effects of Pacifica's actions with Berry and Chadwick. Bill Harvey (Harvey) from the employees union, CWA, informed the JLAC of his discussions.

*"I told Chadwick that while Pacifica's relationship with their managers was not subject to the collective bargaining agreement, that some explanation for Pacifica's actions [terminating Sawaya] was necessary as our members were used to having input on both hiring and performance reviews and felt their opinions had been ignored. Chadwick told me she could not elaborate on Pacifica's personnel decision. I suggested to her that in the absence of an explanation, people would draw their own conclusions and that there was already significant anger being expressed."*⁴⁴

Berry and Chadwick remained inaccessible. Throughout the conflict, calls for responses from Chadwick or Berry apparently went unanswered.

*"Though 700 supporters stood in the streets protesting punitive Pacifica measures against KPFA, we did our job on the air and we made good radio that day. But Pacifica's silence and distance were growing, as did our increasingly urgent appeals for crisis resolution."*⁴⁵

As the conflict grew, Berry and Chadwick apparently became increasingly inaccessible. Chadwick moved from her office within the KPFA building, stating that she felt at risk for her

⁴⁴ Oral testimony of Bill Harvey

⁴⁵ Oral testimony of Susan Stone

safety. While absent, she continued to serve as acting General Manager of KPFA, despite the fact that staff allegedly could not reach her. Stone described the circumstances,

*“We are unable to contact our executive director unless she happens to call in. Her telephone number as well as the new location of Pacifica offices will not be given to us. We are governed by a remote location by someone with whom we have no access.”*⁴⁶

The KPFA local advisory board and the staff requested meetings with Berry, but were unsuccessful. Imani explained,

*“We have at every turn, tried to sit down, even against our own... But continually, the community and the staff of KPFA has reached out to Pacifica to continue the dialogue and every time been burned and burned again.”*⁴⁷

Although, Berry refused to meet with community leaders and staff, she made public statements to the media, defending the Pacifica Foundation’s actions. This led to further tension between Pacifica and KPFA supporters and staff.

“...we had been begging and pleading for months for her to come. And she held a private press briefing on the 21st floor of the Marriott Hotel near downtown Oakland and... because we had some friends in the newsrooms in the area, we happened to find out about this. We...wanted to come to the press meeting and . . . she had armed guards turn us away. And when the TV cameras showed up and

⁴⁶ Oral testimony of Susan Stone

⁴⁷ Oral testimony of J. Imani

were going to show this on television all over the Bay Area -- the community members... primarily young people and women, being turned away from a press conference about community radio in our community -- she decided to open the doors in graciousness and goodwill and then refused to sit and meet with us because the cameras were there -- the cameras she had invited.”⁴⁸

Rather than participating dialogue, Pacifica responded through the press, according to Stone. After a steering committee representing stakeholder groups was formed, Pacifica blamed the union’s restrictions for the silence, claiming that the union had not approved more open discussions. However, the local advisory committee and union representatives contend that this was untrue.

“...she [Berry] told us she couldn’t talk with us because the union hadn’t given its okay, which was another bold faced lie, because [union steward] Mark Mericle, that morning in a meeting, had given her a signed letter from the union, had said nothing to her in the meeting but ‘Dr. Berry, you need to meet with the negotiating team. Dr. Berry we can’t discuss this, you need to meet with the negotiating team.’ And then she spat in my face and told me a lie -- that she could not discuss this with me because she didn’t have clearance from the union.”⁴⁹

The union representative, in fact, had “arranged for a discussion between Pacifica and some of our representatives with the bargaining unit in which we proposed that Sawaya be rehired, that all discipline, including Bensky’s termination be rescinded and that Pacifica enter into mediation with all the stakeholders, paid and unpaid staff, local

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advisory board and representatives of the community on the underlying causes of the dispute,” said Harvey.

“One telephone meeting was held with little progress but agreement to continue discussions. There were no further discussions with this group because, we discovered later, Pacifica was mad about some events that occurred subsequent to the first discussion.”⁵⁰

When discussions with the union initially occurred, Pacifica removed the most contentious items.

“Discussions between the union and Pacifica, who flew their labor lawyer out from southern California, began but did not progress very far because Pacifica was still insisting on the gag rule, refused to discuss terminations and would not include the unpaid staff and local advisory board or the community in the discussions...”⁵¹

Though Berry finally agreed to come to California with her proposals, she restricted her communication to union representatives, witnesses told the JLAC.

The pattern of non-responsiveness by Pacifica was repeated in the Foundation’s involvement with legislative inquiries. Pacifica’s voluntary response to repeated requests for information by the JLAC concerning expenditures and financial information consisted of only one letter sent to the JLAC, which stated:

⁴⁹ Oral testimony of J. Imani

⁵⁰ Oral testimony of Bill Harvey

⁵¹ *ibid*

“All of the extraordinary actions and expenses that Pacifica has undertaken have been a measured and reasonable response to the extraordinary actions taken against the station.”⁵²

Several weeks prior to the hearing, in a letter to Berry and Chadwick, Assemblywoman Aroner had offered to help mediate the dispute.

“As a KPFA listener and contributor, and as a member of the Assembly, if I can be of assistance in resolving the problems confronting KPFA and Pacifica, I am more than willing to offer my services.”⁵³

Aroner never received a response from Pacifica.

Finally, after the JLAC requested financial materials pertaining to the financial expenditures, Pacifica set forth a condition of confidentiality, which the Joint Rules Committee of the Legislature rejected. JLAC Chairman Wildman subsequently issued a subpoena for certain financial documents related to KPFA situation.

“In approving the issuance of the subpoena, the Joint Rules Committee expressly rejected the condition set forth in your letter to Assembly Member Scott Wildman,

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⁵³ Letter from Assemblywoman Aroner to Pacifica Board Chair Mary Frances Berry, June 17, 1999

dated September 1, 1999, that all documents provided to the Joint Legislative Audit Committee be kept confidential...”⁵⁴

Shortly thereafter, the Pacifica Foundation released the requested financial information to the committee and to the public.

Subsequent to the August 20, 1999, hearing, the Pacifica National Board passed a resolution at its October 1999, meeting, stating that it has no intention to sell KPFA or any other licensee. It also resolved not to charge the extraordinary costs associated with the conflict in Berkeley to KPFA and their listener supporters - including the costs for retaining 24-hour guards posted by Pacifica at the KPFA property and the public relations consultants hired by Pacifica to dispel the situation.

Conclusion

Based on the testimony and documents provided by participants in the JLAC hearing of August 20, 1999, the JLAC has reached the following conclusions (It should be noted that Pacifica executives did not attend the August 20, 1999, hearing and consequently provided no defense or explanation for their actions).

- Several of Pacifica’s actions appear to contradict the stated mission of the Pacifica Foundation.

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- Pacifica's actions appear to have violated the operative collective bargaining agreement with KPFA employees.
- Pacifica may have violated the California Corporations Code when it removed the voting rights of LAB members when voting for Board directors - without the approval of those members.
- Pacifica breached an implied contract with its local programmers, subscribers and volunteers.
- Pacifica may have violated and hindered, rather than furthered, the stated goals and missions of the Foundation
- Pacifica engaged in poor management practices that may have damaged the credibility of the corporation.
- Pacifica may not have sufficiently informed its board of issues critical to Board decisions, thus compromising the Board's ability to exercise its fiduciary responsibilities.
- Pacifica executives used local KPFA operating revenues for purposes inconsistent with established practices and inconsistent with reasonable donor expectations.
- Pacifica's management practices in relation to the KPFA crises were inconsistent with its mission.
- Pacifica's failure to communicate with its stakeholders and employees was inconsistent with its founding principles.